

Message Text

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SUBJ: AGENDA FOR ECONOMIC/COMMERCIAL SUBCOMMISSION
MEETING - ADDITIONAL BRIEFING MATERIAL

1. PREMJIT SINGH, PARTNER OF THE LAW FIRM OF BAKER AND MCKENZIE, CHICAGO, WHO HAS HAD WIDE-RANGING EXPERIENCE EXTENDING OVER MORE THAN 15 YEARS IN HANDLING THE CORPORATE AFFAIRS OF SEVERAL MAJOR US INVESTORS IN INDIA TOLD AN EMBASSY REPRESENTATIVE JANUARY 14 THAT, IN HIS OPINION, THE "MAJOR IRRITANT" TO US COMPANIES CONTEMPLATING EXPANSIONS IN INDIA (EITHER VOLUNTARILY OR AS PART OF THE DILUTION PROCESS UNDER FERA) ARE THE EXTREMELY RESTRICTIVE GUIDELINES ISSUED BY THE MINISTRY OF FINANCE (OFFICE OF THE CONTROLLER OF CAPITAL ISSUES) FOR THE CAPITALIZATION OF CAS RESERVES THROUGH THE ISSUANCE OF BONUS SHARS. THE GUIDELINES INTER ALIA STIPULATE THAT (A) NOT MORE THAN 66.7 PERCENT OF THE RESERVES MAY BE CAPITALIZED THROUGH THE ISSUE OF BONUS SHARES; (B) NOT MORE THAN TWO BONUS SHARE ISSUES WILL BE ALLOWED TO A COMPANY OVER A PERIOD OF FIVE YEARS; AND (C) AT ANY ONE TIME THE TOTAL AMOUNT APERMITTED TO BE CAPITALIZED FOR ISSUE OF BONUS SHARES OUT OF THE FREE RESERVES SHALL NOT EXCEED THE TOTAL AMOUNT OF THE PAID-UP EQUITY CAPITAL OF THE COMPANY. STIUPLATION C IS THE ONE THAT IS CAUSING THE MOST CONCERN TO US COMPANIES. THIS CONDITION WORKS AGAINST THE INTEREST OF THOSE US COMPANIES WHICH ARE CURRENTLY CONTEMPLATING SUBSTANTIAL EXPANSIONS IN

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INDIA OR THOSE CONFRONTED WITH THE PROSPECT OF SUBMITTING AN

ACCEPTABLE FINANCIAL PLAN TO THE GOI FOR DILUTION UNDER FERA
THROUGH THE PRECESS OF EXPANDING THEIR EXISTING EQUITY BASE.

2. US COMPANIES WHICH THESE GUIDELINES AFFECT INCLUDE ABBOTT LABORATORIES, AMERICAN CYANAMID, INGERSOLL-RAND, AND MAREMONT CORPORATION. ALL HAVE EXPANSION PROJECTS AND/OR DILUTION PROGRAMS THAT ARE IN JEOPARDY BECAUSE OF THE GOI'S RELUCTANCE TO GRANT ANY EXCEPTION WHATSOEVER AUNDER THE GUIDELINES. THE COMPANIES INVOLVED GENERALLY BEGAN OPERATIONS IN INDIA IN THE PERIOD BEFORE INDIAN INDEPENDENCE OR IMMEDIATELY THEREAFTER ON A SMALL EQUITY BASE AND BUILT UP LARGE RESERVES WITH THE OBJECT OF UTILIZING THE RESERVES AT A LATER DATE FOR EXPANSION/DIVERSIFICATION.

3. THE GOI IMPOSED THESE RESTRICTIONS ON CAPITALIZATION OF RESERVES ON ALL FIRMS, INDIAN AS WELL AS JOINT VENTURES, TO AVOID CIRCUMVENTION OF THE 12 PERCENT CEILING ON DIVIDENDS WHICH WAS IMPOSED IN JULY 1974 AS AN ANTI-INFLATION MEASURE. THE FINANCE MINISTRY HAS SUGGESTED THAT THE US COMPANIES BRING IN NEW DOLLAR CAPITAL TO CARRY OUT THEIR EXPANSIONS. THE COMPANIES POINT OUT THAT THE RESERVES THEY HAVE ACCUMULATED COULD HAVE BEEN FREELY REPATRIATED DURING THE YEARS PRIOR TO THE DIVIDEND RESTRICTION. THEY HAVE ASKED THE GOI TO TREAT EACH CASE ON ITS MERITS INSTEAD OF IMPOSING A BLANKET RESTRICTION.

4. US MIGHT WISH TO ENCOURAGE GOI TO TAKE A MORE PRAGMATIC STAND ON REQUESTS FOR MODIFICATION OF THE GUIDELINES. MANY OF THE PROPOSED EXPANSION AND DIVERSIFICATIONS BEING CONTEMPLATED BY THESE FIRMS ARE HEAVILY EXPORT ORIENTED.
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